



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2015–0013; FXES11130900000C6–145–FF09E42000]

RIN 1018–BA42

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Black-footed Ferrets in Wyoming

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in coordination with the State of Wyoming and other partners, propose to reestablish additional populations of the black-footed ferret (*Mustela nigripes*), a federally listed endangered mammal, into

occupied prairie dog (*Cynomys* spp.) habitat in Wyoming. We propose to reestablish the black-footed ferret under section 10(j) of the Endangered Species Act of 1973, as amended (Act), and to classify any reestablished population as a nonessential experimental population (NEP). This approach would provide relaxed management rules to facilitate reintroductions. We are seeking comments on this proposal and on our draft environmental assessment, prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), which analyzes the potential environmental impacts associated with the proposed reintroduction.

We are also notifying the public that we are amending the List of Endangered and Threatened Wildlife (List) to reflect the scientifically accepted historical range of the black-footed ferret. The revised historical range description includes Mexico. The historical range information in the List is informational, not regulatory.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date.

ADDRESSES: *Written Comments:* You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter Docket No. FWS–R6–ES–2015–0013, which is the docket number for this rulemaking. Then, click the Search button. In

the Search panel on the left side of the screen, under the Document Type heading, click on the box next to Proposed Rules to locate this document. You may submit a comment by clicking on “Comment Now!”

- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2015–0013; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section, below, for more information).

Copies of Documents: The proposed rule and draft environmental assessment are available on <http://www.regulations.gov>. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009; telephone 307-772-2374. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1-800-877-8339.

FOR FURTHER INFORMATION CONTACT: Mark Sattelberg, Field Supervisor, Telephone: 307-772-2374. Direct all questions or requests for additional information to: BLACK-FOOTED FERRET QUESTIONS, U.S. Fish and Wildlife Service, Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY

82009. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Public Comments

We want any final rule resulting from this proposal to be as effective as possible. Therefore, we invite Tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible.

To issue a final rule to implement this proposed action, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. Comments must be submitted to <http://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in the **DATES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we

withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as some of the supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

We are specifically seeking comments concerning:

- The appropriateness of designating reintroduced populations of black-footed ferrets in Wyoming as NEPs;
- Threats to black-footed ferrets in the proposed NEP area that have not been considered in this proposed rule and that might affect a reintroduced population;
- The suitability of the proposed boundaries for this NEP;
- The effects of reintroducing black-footed ferrets on public and private land management activities such as ranching, recreation, energy development, and residential development; and
- The compatibility of this proposal and ongoing efforts to implement the black-footed ferret safe harbor agreement (SHA) in cooperation with non-federal landowners.

Peer Review

In accordance with our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, which was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate and independent specialists

regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

Background

Statutory and Regulatory Framework

The black-footed ferret was listed as endangered throughout its range on March 11, 1967 (32 FR 4001), and again on June 2, 1970 (35 FR 8491), under early endangered species legislation and was “grandfathered” under the Act (16 U.S.C. 1531 *et seq.*) without critical habitat. The Act provides that species listed as endangered are afforded protection primarily through section 9 prohibitions and the consultation requirements of section 7. Section 9 of the Act, among other things, prohibits the taking of endangered wildlife. “Take” is defined by the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act

does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

Congress amended the Act in 1982, because species' reintroductions were difficult to achieve due to concerns over the rigid protection and prohibitions surrounding listed species (U.S. Fish and Wildlife Service 2010). Although the Secretary of the U.S. Department of the Interior (Secretary) already had authority to conserve a species by introducing it in areas outside its current range, Congress enacted the provisions of section 10(j) to mitigate fears that reintroduced populations would negatively impact landowners and other private parties. Congress recognized that more flexible reintroduction rules could encourage recovery partners to host such populations on their lands (H.R. Rep. No. 97-567, at 8 (1982)). Congress designed section 10(j) to provide the Secretary regulatory flexibility and discretion in managing the reintroduction of endangered species. This flexibility allows the Secretary to better conserve and recover endangered species (H.R. Rep. No. 97-567, at 33 (1982)).

Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitable and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. This approach allows us to develop tailored take prohibitions under section 4(d) of the Act that are

necessary and advisable to provide for the conservation of the species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the 10(j) rule that already exists for the black-footed ferret contains the prohibitions and exemptions necessary and appropriate to conserve that species.

Authorities under section 10(j) of the Act have been successfully used to reintroduce black-footed ferrets in other portions of their range, which historically included portions of Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming, as well as Saskatchewan, Canada, and Chihuahua, Mexico. Eleven of 24 reintroduction efforts, including the first ferret reintroduction at Shirley Basin, Wyoming, were established pursuant to section 10(j); seven reintroduction efforts were authorized via scientific recovery permits issued by the Service under section 10(a)(1)(A); and four sites were established via the SHA. Ferrets reintroduced at sites in Canada and Mexico are regulated under other authorities by their respective governments.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. In making such a finding, the Service will use the best scientific and commercial data available to consider the following factors (see 49 FR 33893, August 27, 1984).

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere.

The captive-breeding population of black-footed ferrets is the primary repository of genetic diversity for the species. Ferrets are dispersed among six facilities, protecting the species from a single catastrophic event. Approximately 250 juvenile ferrets are produced annually through the captive breeding program; approximately 80 juveniles are retained annually for future captive breeding purposes, and the remaining juveniles are considered excess and are allocated for reintroduction or occasionally for research (U.S. Fish and Wildlife Service 2013a, p. 81). Ferrets selected for reintroduction under this proposed rule will be genetically redundant to animals maintained for captive-breeding; hence any loss of reintroduced animals will not impact the genetic diversity of the species. Only ferrets that are surplus to the needs of the captive-breeding program are used for reintroduction into the wild. Therefore, any loss of an experimental population in the wild will not threaten the survival of the species as a whole.

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future.

The best available data indicate that reintroduction of black-footed ferrets into occupied prairie dog habitat in Wyoming is biologically feasible and will promote conservation of the species. Currently, we estimate a minimum of 102 breeding adult ferrets at Shirley Basin, Wyoming (U.S. Fish and Wildlife Service 2013a, Table 2). Shirley Basin is one of four currently successful ferret reintroduction sites (U.S. Fish and Wildlife Service 2013a, pp. 22 and 73). We are confident that Wyoming can support

additional successful reintroduction sites, based on the amount of available habitat and a history of successful ferret management at Shirley Basin since 1991.

(3) The relative effects that establishment of an experimental population will have on the recovery of the species.

Participation by as many of the States and Tribes within the black-footed ferret's historical range as possible is important to achieving recovery of the species. We consider occupied prairie dog habitat to be potential habitat for ferrets. Tribes have played an important role in ferret recovery in several areas of the species' historical range. However, we are not aware of any prairie dog complexes suitable for ferret reintroduction on or adjacent to Tribal lands in Wyoming. The nearest potential reintroduction sites are two white-tailed prairie dog complexes—Fifteen-mile Complex near Worland in Hot Springs County and Sweetwater Complex near Sweetwater Station in Fremont County (Luce 2008, pp. 29–30). Both sites are of intermediate potential for ferret reintroduction and are located approximately 19 miles (30 kilometers) from reservation boundaries. Wyoming currently contains more than 3 million acres (ac) (1,215,000 hectares (ha)) of prairie dog occupied habitat (Van Pelt 2013, pp. 8 and 14). Consequently, Wyoming has the potential to play a significant role in recovery of the ferret.

(4) The extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

We conclude that the effects of Federal, State, and private actions will not pose a substantial threat to black-footed ferret establishment and persistence in Wyoming because the best available information, including the past history of ferret reintroductions at other sites rangewide, indicates that activities currently occurring or likely to occur at prospective reintroduction sites in occupied prairie dog habitat within the proposed NEP area are compatible with ferret recovery (see subsequent discussion on management).

As set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species. Detailed information on each of these required elements is provided in the following sections.

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, Tribes, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population

rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service; the affected State, Tribal, and Federal agencies; and persons holding any interest in land which may be affected by the establishment of an experimental population.

Based on the best scientific and commercial data available, we must determine whether the experimental population is *essential* or *nonessential* to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential. We have determined that this proposed experimental population would not be essential to survival of the black-footed ferret in the wild because loss of an experimental population in Wyoming will not affect the 23 reintroduction sites outside of Wyoming in Arizona, Colorado, Kansas, Montana, New Mexico, South Dakota, and Utah; in Chihuahua, Mexico; and in Saskatchewan, Canada. Therefore, loss of an experimental population in Wyoming will not appreciably reduce the likelihood of future survival of the ferret rangewide.

All reintroduction efforts are undertaken to move a species toward recovery. Recovery of the black-footed ferret will require participation by at least 9 of the 12 States within the species' historical range (U.S. Fish and Wildlife Service 2013a, p. 6). Wyoming contains 10 percent of the species' historical range in the United States (Ernst *et al.* 2006, table 1) and an even higher percentage of habitat that is currently available—more than 3 million ac (1,215,000 ha) of prairie dog occupied habitat (Van Pelt 2013, pp. 8 and 14). Therefore, the State could play a significant role in the species' recovery.

However, this does not mean that ferret populations in Wyoming are “essential” under section 10(j) of the Act.

The potential future loss of black-footed ferrets from Wyoming would not affect the species’ survival throughout the remaining 90 percent of its range in the wild, or in captivity. We estimate that there are approximately 418 breeding adult ferrets in the wild, including approximately 102 breeding adults in the reintroduced population at Shirley Basin, Wyoming (24 percent of ferrets in the wild); there are a minimum of 280 breeding adults in captivity (U.S. Fish and Wildlife Service 2013a, pp. 22 and 68). Animals lost during reintroduction efforts can be readily replaced through captive-breeding, which produces juvenile ferrets in excess of the numbers needed to maintain the captive-breeding population. Captive-breeding and reintroduction of surplus ferrets have occurred since 1991, with no apparent loss of reproductive capability in the wild observed to date. The loss of an experimental population in Wyoming will not appreciably reduce the likelihood of future survival of the ferret rangewide. Therefore, the Service is proposing to designate an NEP for the ferret throughout Wyoming.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or unit of the National Park Service, and Federal agency conservation requirements under section 7(a)(1) and Federal agency consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is

not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat.

When NEPs are located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) apply. In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the NEP is, by definition, not essential to the continued existence of the species, the effects of proposed actions affecting the NEP will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely not be required for black-footed ferrets established within the proposed NEP area in Wyoming. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a species proposed for listing. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat for a reintroduced species in areas where we establish an NEP.

Biological Information

The endangered black-footed ferret is the only ferret species native to the Americas (Anderson *et al.* 1986, p. 24). It is a medium-sized mustelid, typically weighing 1.4–2.5 pounds (645–1125 grams) and measuring 19–24 inches (479–600 millimeters) in total length; upper body parts are yellowish buff, occasionally whitish, feet and tail tip are black, and a black “mask” occurs across the eyes (Hillman and Clark 1980, p. 30).

The black-footed ferret depends almost exclusively on prairie dogs for food and on prairie dog burrows for shelter (Hillman 1968, p. 438; Biggins 2006, p. 3). Historical habitat of the ferret coincided with the ranges of the black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*C. leucurus*), and Gunnison’s prairie dog (*C. gunnisoni*), which collectively occupied approximately 100 million ac (40 million ha) of intermountain and prairie grasslands extending from Canada to Mexico (Anderson *et al.* 1986, pp. 25–50; Biggins *et al.* 1997, p. 420). This amount of prairie dog habitat could have supported 500,000–1,000,000 ferrets historically (Anderson *et al.* 1986, p. 58). Since the late 1800s, ferret specimens have been collected from Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming in the United States and Saskatchewan and Alberta in Canada (Anderson *et al.* 1986, pp. 25–50). We conclude that the ferret’s historical range included Mexico, which is within the contiguous range of the black-tailed prairie dog as previously noted (Biggins *et al.* 1997, p. 420). This inclusion of Mexico in the ferret’s historical range is described in more detail in the recovery plan and resulted in a ferret reintroduction initiated in 2001 (U.S. Fish and Wildlife Service 2013a, pp. 16–17).

Black-footed ferrets historically occurred throughout Wyoming (except for the extreme northwest corner of the State) within black-tailed prairie dog habitat in the eastern portion of the State and white-tailed prairie dog habitat in the west (Anderson *et al.* 1986, p. 48). The last wild population of ferrets was discovered near Meeteetse, Wyoming, in 1981, after the species was presumed extinct (Clark *et al.* 1986, p. 8; Lockhart *et al.* 2006, p. 8). Following disease outbreaks at Meeteetse, all surviving wild ferrets were removed from the wild between 1985 and 1987, to initiate a captive-breeding program (Lockhart *et al.* 2006, p. 8). No wild populations have been found since the capture of the last Meeteetse ferret despite extensive and intensive rangewide searches; it is unlikely that any undiscovered wild populations remain. Therefore, the Service considers the State of Wyoming unoccupied by wild ferrets, with the exception of reintroduced populations, which alleviates the requirement for project proponents to conduct presence/absence surveys for ferrets under section 7 of the Act prior to developing projects (U.S. Fish and Wildlife Service 2013c). In Shirley Basin, Wyoming, a reintroduced population of ferrets was established as an NEP in accordance with section 10(j) of the Act. The Wolf Creek, Colorado, reintroduction site was also established as an NEP under section 10(j), and includes a small portion of Sweetwater County, Wyoming, in the experimental population area. However, no evidence of ferrets from this reintroduction effort has been found in Sweetwater County or elsewhere in Wyoming. The map at the conclusion of this proposed rule identifies the existing NEPs in Wyoming.

Relationship of the Experimental Population to Recovery Efforts

All currently known black-footed ferrets in the wild are the result of reintroduction efforts. As previously discussed, only ferrets that are surplus to the needs of the captive-breeding program are used for reintroduction into the wild. There have been 24 ferret reintroduction projects, beginning in 1991, at Shirley Basin in the southeastern portion of Wyoming. Shirley Basin contains the only ferret population in Wyoming.

The downlisting criteria for the black-footed ferret include establishing at least 1,500 free-ranging breeding adults in 10 or more populations, in at least 6 of 12 States within the historical range of the species, with no fewer than 30 breeding adult ferrets in any population; delisting criteria include establishing at least 3,000 free-ranging breeding adults in 30 or more populations, in at least 9 of 12 States within the historical range of the species, with no fewer than 30 breeding adults in any population (U.S. Fish and Wildlife Service 2013a, pp. 61–62). In our recovery plan for the ferret, we suggest recovery guidelines for the States that are proportional to the amount of prairie dog habitat historically present. A proportional share for Wyoming would include approximately 171 free-ranging breeding adult ferrets to meet their portion of the rangewide numerical goal for downlisting and 341 breeding adults to meet their portion of the rangewide numerical goal for delisting; each ferret population should contain at least 30 breeding adults to be considered viable (U.S. Fish and Wildlife Service 2013a, Table 8).

Currently, we estimate a minimum of 102 breeding adult black-footed ferrets at Shirley Basin, Wyoming (U.S. Fish and Wildlife Service 2013a, Table 2). Shirley Basin is one of four currently successful ferret reintroduction sites—other successful sites

include two in South Dakota and one in Arizona (U.S. Fish and Wildlife Service 2013a, p. 73). We are confident that Wyoming can support additional successful reintroduction sites, based on the amount of available habitat (see the following section) and a history of successful ferret management at Shirley Basin since 1991. Additional viable ferret populations within Wyoming will aid recovery of the species.

In 2013, the Service developed a programmatic SHA to encourage non-federal landowners to voluntarily undertake conservation activities on their properties that would benefit the black-footed ferret (U.S. Fish and Wildlife Service 2013b). This SHA is applicable across the 12 States in the ferret's historical range, including Wyoming. Landowners are provided assurances that additional restrictions will not be required, as long as the landowner complies with provisions outlined in the SHA and detailed in a Reintroduction Plan developed for the enrolled lands. The goals of the SHA and the proposed 10(j) are similar—achieve recovery of the ferret. However, conservation activities are more tailored to the specific site under the SHA. There are also differences between SHA and 10(j) regarding regulations under the Act (statutory and regulatory framework are discussed in the **Background** section, above). The decision of whether to use 10(j) or the SHA is at the landowner's discretion.

Location of the Proposed Nonessential Experimental Population

The proposed NEP for Wyoming would be Statewide, with the exception of the two areas where an NEP designation for black-footed ferret already exists (see below). Furthermore, suitable habitat for black-footed ferret reintroduction in the proposed NEP would likely be limited to Big Horn, Campbell, Carbon, Converse, Crook, Fremont,

Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Uinta, Washakie, and Weston Counties because these counties have sufficient prairie dog habitat to support viable ferret populations. If this rule is finalized as proposed, any ferrets found in Wyoming would be considered part of an NEP. There are many historical records of ferrets within the proposed NEP (Anderson *et al.* 1986, pp. 36–37). However, the species has been extirpated throughout the State since 1987, with the exception of a reintroduced ferret population in the Shirley Basin. A 10(j) designation already exists for the Shirley Basin ferret population in Albany County and portions of Carbon and Natrona Counties that are east of the North Platte River. A 10(j) designation also exists for the Wolf Creek, Colorado, ferret reintroduction site and includes a very small portion of Sweetwater County in Wyoming. Both of these NEPs would remain outside the boundary of the proposed NEP under 10(j) of the Act, and would continue to operate under their respective management plans. Any new reintroduction sites within the proposed NEP would require development of a management plan specific to that site.

Several sites in Wyoming are suitable for reintroduction of black-footed ferrets in addition to the Shirley Basin site. The main requirements for ferret reintroduction are:

- (1) An area of occupied prairie dog habitat that is purposefully managed and of sufficient size to support a viable population of ferrets (a minimum of 1,500 ac (608 ha) of black-tailed prairie dog occupied habitat or 3,000 ac (1,215 ha) of white-tailed or Gunnison's prairie dog occupied habitat); (2) a willing landowner; and (3) a management plan that addresses sylvatic plague. Recent estimates of prairie dog occupied habitat in Wyoming include 2,893,487 ac (1,171,862 ha) in the white-tailed prairie dog range and 229,607 ac

(92,991 ha) in the black-tailed prairie dog range (Van Pelt 2013, pp. 8 and 14). Luce (2008, pp. 28–31) identified several sites in Wyoming with potential for ferret reintroduction including one site with potential for reintroduction within less than 3 years, 24 sites with potential for reintroduction within 3–10 years, and two sites with long-term potential for reintroduction.

Likelihood of Population Establishment and Survival

The Service and its partners have initiated 24 black-footed ferret reintroduction projects since 1991. These projects have experienced varying degrees of success. However, all reintroduction efforts have contributed to our understanding of the species' needs. Recovery of the species is a dynamic process that requires adaptive management.

Some transfers of individual black-footed ferrets between populations will likely be necessary in perpetuity to maintain genetic diversity in the face of habitat fragmentation and as a management tool for sylvatic plague (until additional plague vaccines can be adapted for field use). Nevertheless, we believe that recovery can be achieved through a combination of expansion of ferret populations at existing reintroduction sites and reintroduction of ferrets at new sites, both of which are possible if conservation of prairie dog occupied habitat and disease management are aggressively pursued.

Participation by all States within the historical range of the black-footed ferret is important to maximize resilience of ferret populations in the wild and to allow for an equitable distribution of the responsibility for achieving recovery goals. Federal, State, and local agencies in Wyoming have been active participants in ferret recovery since the

last wild population was found at Meeteetse in 1981. With an estimated 102 breeding adult ferrets already established at Shirley Basin, suggested numerical recovery guidelines for Wyoming of 171 breeding adults to support rangewide downlisting and 341 breeding adults to support rangewide delisting are achievable. Meeting their portion of the rangewide numerical goal for downlisting would require establishing one additional large reintroduction site similar to Shirley Basin or two to three smaller sites. Meeting their portion of the rangewide numerical goal for delisting would require establishing two large sites, six small sites, or a combination of large, medium, and small sites in addition to the sites previously established for meeting their portion of the rangewide numerical goal for downlisting. The Recovery Plan estimates that 35,000 ac (14,000 ha) of purposefully managed prairie dog occupied habitat will be needed to meet Wyoming's portion of the rangewide habitat goal for downlisting and 70,000 ac (28,000 ha) to meet their portion of the rangewide habitat goal for delisting (U.S. Fish and Wildlife Service 2013a, Table 8). This equates to purposeful management of approximately 2 percent of prairie dog occupied habitat in Wyoming to meet their portion of the rangewide habitat goal for delisting.

Sustaining black-footed ferret numbers during periodic outbreaks of sylvatic plague will require ongoing management, potentially including dusting prairie dog burrows with flea control powder and vaccinating ferrets prior to release. Additionally, research is currently underway investigating the potential of supporting ferrets at reintroduction sites by providing vaccine to wild prairie dogs via oral bait.

The Service, the Wyoming Game and Fish Department (WGFD), and other partners propose to reintroduce the black-footed ferret at one or more additional sites

within the species' historical range in Wyoming. These reintroduced populations would be managed as a NEP. If this proposed rule is finalized, the WGFD, in cooperation with the Service, would have primary management responsibilities for ferret reintroductions in Wyoming. Based upon the past history of successful management at Shirley Basin, Wyoming, and the substantial amount of occupied prairie dog habitat available for additional reintroduction of ferrets, we believe there is a high likelihood of population establishment and survival in Wyoming.

Addressing Causes of Extirpation

The black-footed ferret rangewide population declined for three principal reasons: (1) A major conversion of native rangeland to cropland, particularly in the eastern portion of the species' range, beginning in the late 1800s; (2) poisoning of prairie dogs to reduce competition with domestic livestock for forage, beginning in the early 1900s; and (3) the inadvertent introduction of sylvatic plague, which causes mortality to both ferrets and prairie dogs, beginning in the 1930s. The combined effects of these three factors resulted in a rangewide decrease in the amount of habitat occupied by prairie dogs from approximately 100 million ac (40.5 million ha) historically to 1.4 million ac (570,000 ha) in the 1960s (U.S. Fish and Wildlife Service 2013a, pp. 23–24). This habitat loss and fragmentation resulted in a corresponding decrease in ferrets, which require relatively large areas of prairie dog occupied habitat to maintain viable populations. By the 1960s, only two remnant ferret populations remained—in Mellette County, South Dakota, and Meeteetse, Wyoming (Lockhart *et al.* 2006, pp. 7–8).

Wyoming has had less rangeland converted to cropland than most other States within the historical range of the black-footed ferret (U.S. Department of Agriculture 2005, Table 1). Consequently, prairie dog poisoning and sylvatic plague are likely the two primary reasons for the extirpation of ferrets from the State. Extensive poisoning of prairie dogs had begun in Wyoming by 1916 (Clark 1973, p. 89), and plague was present in Wyoming by 1936 (Eskey and Haas 1940, p. 4). Occupied prairie dog habitat reached a low in Wyoming in the early 1960s, when approximately 64,336 ac (26,056 ha) were reported (U.S. Bureau of Sport Fisheries and Wildlife 1961, Table 1). However, large-scale poisoning of prairie dogs no longer occurs, and poisoning is more closely regulated than it was historically. Improved plague management, including dusting prairie dog burrows with insecticide to control fleas (the primary vector for plague transmission) and the development of vaccines that prevent plague in prairie dogs and black-footed ferrets, is also being used.

The most recent surveys estimate 3,123,094 ac (1,264,853 ha) of occupied prairie dog habitat in Wyoming (Van Pelt 2013, pp. 8 and 14). This considerable increase over the past 50 years indicates that there has been a reduction in threats and improved management of prairie dogs. This increases the likelihood of successful reintroduction of ferrets in Wyoming.

Release Procedures

The Service will cooperate with other Federal agencies, WGFD, Tribes, landowners, and other stakeholders to develop, implement, and maintain long-term site management before, during, and after releases. Partners will collect habitat data for site

evaluation and documentation of baseline conditions and develop management plans for prairie dogs and plague prior to any release of black-footed ferrets. All applicable laws regulating the protection of ferrets will be followed (see *Management*, below). Partners will develop annual site-specific reintroduction plans and submit them to the Service by mid-March as part of an annual ferret allocation process (which allocates available captive ferrets for release in specific numbers for specific sites). Reintroduction plans will include current estimates of prairie dog numbers and density, disease prevalence and management, proposed reintroduction and monitoring methods, and predator management. If the reintroduction plan covers years subsequent to the initial releases, it will also include a recent description of the status of ferrets on the site.

All reintroduction efforts will follow techniques described in Roelle *et al.* (2006) as appropriate, which presents recommendations for managing captive populations, evaluating potential habitat, reestablishing populations, and managing disease. Captive-reared black-footed ferrets exposed to prairie dog burrows and natural prey in outdoor preconditioning pens prior to their release survive in the wild at significantly higher rates than cage-reared, non-preconditioned ferrets (Biggins *et al.* 1998, pp. 651–652; Vargas *et al.* 1998, p. 77). Therefore, all captive-reared ferrets released within the proposed Wyoming NEP will receive adequate preconditioning in outdoor pens at the National Black-footed Ferret Conservation Center or at another facility approved by the Service. We will vaccinate all ferrets for canine distemper and sylvatic plague and mark them with passive integrated transponder tags prior to release. We will transport ferrets to the reintroduction site and release them directly from transport cages into prairie dog burrows. In conformance with standard ferret reintroduction protocol, no fewer than 20

captive-raised or wild-translocated ferrets will be released at any reintroduction site in Wyoming during the first year of the project. Twenty or more additional animals will be released annually for the next 2–4 years. Released ferrets will be excess to the needs of the captive-breeding program.

Donor Stock Assessment and Effects on Donor Populations

Eighteen black-footed ferrets were captured from the last wild population at Meeteetse, Wyoming, in 1985–1987, and used to initiate a captive-breeding program (Lockhart *et al.* 2006, pp. 11–12). Of the 18 captured ferrets, 15 individuals, representing the genetic equivalent of 7 distinct founders, produced a captive population that is the foundation of present recovery efforts (Garelle *et al.* 2006, p. 4). Extant ferret populations, both captive and reintroduced, descend from these seven founders. The purpose of the captive-breeding program is to provide animals for reintroduction to achieve recovery of the species, while maintaining maximum genetic diversity in the captive population (U.S. Fish and Wildlife Service 2013a, p. 81).

Black-footed ferrets used to establish any experimental population in the proposed Wyoming NEP will either be translocated wild-born kits from another self-sustaining reintroduced population (such as Shirley Basin) or come from one of six captive-breeding populations currently housed at the U.S. Fish and Wildlife Service National Black-footed Ferret Conservation Center near Wellington, Colorado; the Cheyenne Mountain Zoological Park, Colorado Springs, Colorado; the Louisville Zoological Garden, Louisville, Kentucky; the Smithsonian Biology Conservation Institute, Front Royal, Virginia; the Phoenix Zoo, Phoenix, Arizona; or the Toronto Zoo, Toronto, Ontario.

The Service and its partners maintain a captive-breeding population of approximately 280 breeding adult black-footed ferrets in order to provide a sustainable source of ferrets for reintroduction. The captive-breeding facilities produce approximately 250 juvenile ferrets annually. Currently, approximately 80 juveniles are retained annually at these facilities for future captive-breeding purposes. The remaining juveniles are allocated annually for reintroduction, or occasionally for research (U.S. Fish and Wildlife Service 2013a, p. 81). Therefore, there will be no effects on donor populations beyond those which are intended and accounted for in the management of wild or captive populations.

Status of Proposed Population

Additional successful reintroductions of black-footed ferrets are necessary for recovery of the species. We propose that any future releases of ferrets in Wyoming be designated as part of an NEP because of the need for increased management flexibility, which will encourage landowner participation and alleviate concerns regarding possible land use restrictions. The existing 10(j) rules for the ferret exempt from the section 9 take prohibitions any take of ferrets that is accidental and incidental to otherwise lawful activities. We provide this exemption to this proposed 10(j) because we believe, based upon experience at previous reintroduction sites, that incidental take associated with otherwise lawful activities such as ranching and energy development will be low. Poisoning of prairie dogs can occur in black-tailed prairie dog habitat and could result in incidental take of ferrets. However, economic constraints have typically minimized the extent of poisoning in recent years compared to what occurred historically. We will

ensure, as confirmed through our section 10 permitting authority and the section 7 consultation process, that the use of ferrets from the donor population (either the captive-breeding population or a self-sustaining wild population) for release into the proposed Wyoming NEP is not likely to jeopardize the continued existence of the species in the wild.

This NEP designation is justified because no adverse effects to extant wild or captive black-footed ferret populations will result from release of progeny from either a wild or captive population onto a new reintroduction site. The only potential adverse effect would be to ferrets at a new reintroduction site, if a ferret population proves difficult to establish. However, we expect that reintroduction efforts into the proposed Wyoming NEP will result in the successful establishment of one or more self-sustaining populations, which will contribute to the recovery of the species.

Management

If this rule is finalized as proposed, the Service will coordinate closely with WGFD and other partners in the management of any black-footed ferrets in Wyoming that are reintroduced under section 10(j) authorities. Management of ferret populations in the proposed Wyoming NEP area would be guided by provisions in management plans developed in cooperation with partners (WGFD) and stakeholders such as U.S. Department of Agriculture's Animal and Plant Health Inspection Service, U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), Natural Resources Conservation Service, Wyoming Department of Agriculture, or potentially affected Tribes.

We conclude that the effects of Federal, State, and private actions will not pose a substantial threat to black-footed ferret establishment and persistence in Wyoming because management activities—primarily ranching and energy development—currently occurring at prospective reintroduction sites in occupied prairie dog habitat within the proposed NEP area are compatible with ferret recovery, provided lethal control of prairie dogs does not reduce prairie dog occupied habitat to the extent that the viability of any potential ferret population is compromised (a minimum of 1,500 ac (608 ha) of black-tailed prairie dog occupied habitat or 3,000 ac (1,215 ha) of white-tailed or Gunnison’s prairie dog occupied habitat). This conclusion is based upon our past experience at ferret reintroduction sites in Wyoming and elsewhere throughout the species’ range. The best available information indicates that future ranching activities and energy development also would be compatible with ferret recovery. Most of the area containing suitable release sites with high potential for ferret establishment is managed by the BLM, the USFS, or private landowners and is currently protected through the following mechanisms:

(1) Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)—The BLM’s mission is set forth under the Federal Land Policy and Management Act, which mandates that BLM manage public land resources for a variety of uses, such as energy development, livestock grazing, recreation, and timber harvesting, while protecting the natural, cultural, and historical resources on those lands. The BLM manages listed and sensitive species under guidance provided in the BLM MS-6840 Manual – Special Status Species Management. The Manual directs BLM to proactively conserve species listed under the Act and the ecosystems upon which they depend, ensure

that all actions authorized or carried out by BLM are in compliance with the Act, and cooperate with the planning and recovery of listed species. The BLM has experience in managing the black-footed ferret at four reintroduction sites in four States that occur at least in part on its lands, including Shirley Basin, Wyoming, and Wolf Creek, Colorado, which includes a small portion of Sweetwater County, Wyoming. Therefore, we anticipate appropriate management by BLM on any future ferret reintroduction sites that include BLM lands.

(2) National Forest Management Act of 1976, as amended (16 U.S.C. 1600 *et seq.*)—The National Forest Management Act instructs the USFS to strive to provide for a diversity of plant and animal communities when managing national forest lands. The USFS identifies species listed as endangered or threatened under the Act, including the black-footed ferret, as Category 1 species at risk based on rangewide and national imperilment. The USFS has experience in managing the black-footed ferret at one reintroduction site in South Dakota that occurs at least in part on USFS lands. Therefore, we anticipate appropriate management by the USFS on any future ferret reintroduction sites that include USFS lands.

(3) Wyoming State Law—The responsibilities of WGFD are defined in Wyoming Statute section 23-1-103, which instructs the WGFD to provide an adequate and flexible system for the control, management, protection, and regulation of all Wyoming wildlife. The Statute defines the black-footed ferret as a protected animal. The WGFD also defines the ferret as a “species of greatest conservation need” (Wyoming Game and Fish Department 2010, pp. IV-2-10–IV-2-13). The Wyoming State Wildlife Action Plan states that the current legal designation for the ferret (endangered) precludes

the ability to initiate additional reintroduction attempts outside of the existing 10(j) at Shirley Basin; however, cooperative approaches to eliminate legal hurdles that preclude additional reintroduction sites should be developed (Wyoming Game and Fish Department 2010, pp. IV-2 -10–IV-2-11). This proposed rule is being developed in cooperation with the State to address those legal barriers and initiate additional ferret reintroductions in Wyoming. The WGFD has experience in managing the ferret at the Shirley Basin Reintroduction site. Therefore, we anticipate appropriate management by WGFD on any future ferret reintroduction sites in Wyoming.

Management issues related to the black-footed ferret proposed Wyoming NEP that have been considered include:

(a) *Incidental take*: The regulations implementing the Act define “incidental take” as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3), such as agricultural activities and other rural development, and other activities that are in accordance with Federal, State, Tribal, and local laws and regulations. Experimental population rules contain specific prohibitions and exceptions regarding the taking of individual animals that are developed under section 4(d) of the Act. If this 10(j) rule is finalized, incidental take of black-footed ferrets within the proposed NEP area would not be prohibited, provided that the take is unintentional and is in accordance with the existing 10(j) regulation. However, if there is evidence of intentional take of this species within the proposed NEP area, we would refer the matter to the appropriate law enforcement entities for investigation. This would be consistent with how we currently manage lands enrolled in the SHA where intentional take is also not allowed.

(b) *Special handling*: In accordance with 50 CFR 17.21(c)(3), any employee or agent of the Service or of a State wildlife agency may in the course of their official duties, handle black-footed ferrets to aid sick or injured ferrets, or to salvage dead ferrets. Employees or agents of other Federal, Tribal, or State agencies would need to acquire the necessary permits from the Service for these activities.

(c) *Coordination with landowners and land managers*: This proposed NEP designation under section 10(j) of the Act was discussed with potentially affected State and Federal agencies, Tribes, local governments, and other stakeholders within the expected reestablishment area. These agencies, landowners, and land managers have either indicated support for, or no opposition to, the proposed population establishment, provided an NEP is designated and a 10(j) rule is promulgated to allow incidental take under the section 9 take prohibitions.

(d) *Public awareness and cooperation*: We will inform the general public of the importance of this reintroduction project for the overall recovery of the black-footed ferret through this proposed rule and associated public meetings, if requested. Designation of the NEP under a 10(j) for Wyoming would increase reintroduction opportunities and provide greater flexibility in the management of the reintroduced ferret. The NEP designation is necessary to secure needed cooperation of the State, landowners, and other interests in the affected area.

(e) *Potential impacts to other federally listed species*: There are several federally listed, proposed for listing (any species of fish, wildlife, or plant that is proposed in the **Federal Register** to be listed), and candidate (the Service has concluded that they should

be proposed for listing) species in Wyoming. These species are identified in the following table.

Table 1. Federally listed, proposed for listing, and candidate species in Wyoming

Species	Current Status in Wyoming under the Act
Black-footed ferret (<i>Mustela nigripes</i>)	Shirley Basin NEP
Gray wolf (<i>Canis lupus</i>)	NEP in Wyoming
Whooping crane (<i>Grus americana</i>)	Endangered
Interior least tern (<i>Sterna antillarum</i>)	Endangered
Piping plover (<i>Charadrius melodus</i>)	Endangered
Wyoming toad (<i>Anaxyrus baxteri</i>)	Endangered
Bonytail chub (<i>Gila elegans</i>)	Endangered
Colorado pikeminnow (<i>Ptychocheilus lucius</i>)	Endangered
Humpback chub (<i>Gila cypha</i>)	Endangered
Razorback sucker (<i>Xyrauchen texanus</i>)	Endangered
Kendall Warm Springs dace (<i>Rhinichthys osculus thermalis</i>)	Endangered
Pallid sturgeon (<i>Scaphirhynchus albus</i>)	Endangered
Blowout penstemon (<i>Penstemon haydenii</i>)	Endangered
Canada lynx (<i>Lynx canadensis</i>)	Threatened, with critical habitat
Grizzly bear (<i>Ursus arctos horribilis</i>)	Threatened
Preble's meadow jumping mouse (<i>Zapus hudsonius preblei</i>)	Threatened
Yellow-billed cuckoo (<i>Coccyzus americanus</i>)	Threatened, with critical habitat proposed
Colorado butterfly plant (<i>Gaura neomexicana coloradensis</i>)	Threatened, with critical habitat
Desert yellowhead (<i>Yermo xanthocephalus</i>)	Threatened, with critical habitat
Western prairie fringed orchid (<i>Platanthera praeclara</i>)	Threatened
Ute Ladies'-tresses (<i>Spiranthes diluvialis</i>)	Threatened
Northern long-eared bat (<i>Myotis septentrionalis</i>)	Proposed endangered
Greater sage-grouse (<i>Centrocercus urophasianus</i>)	Candidate
Fremont County rockcress (<i>Boechera pusilla</i>)	Candidate
Whitebark pine (<i>Pinus albicaulis</i>)	Candidate

Nearly all of the aforementioned species have habitat requirements such as forests, dunes, wetlands, or river systems that differ from the grassland prairie habitat requirements for the black-footed ferret. The only species that may be affected by

reintroduction projects for the ferret in the proposed Wyoming NEP, other than the ferret, is the greater sage-grouse. The greater sage-grouse requires large, interconnected expanses of sagebrush (Connelly *et al.* 2004, p. 3-2; Stiver *et al.* 2006, p. I-2; Knick and Connelly 2011, p. 1). Habitat loss, degradation, and fragmentation are the primary threats to the greater sage-grouse. A detailed description of the species' natural history, seasonal habitats, threats, and population trends can be found in the Service's 12-month finding (75 FR 13910, March 23, 2010). The ferret also requires large expanses of intact habitat; although it is dependent on prairie dogs, not sagebrush. However, some prairie dog habitat, particularly white-tailed prairie dog habitat, contains sagebrush. Prairie dogs may clip shrubs, including sagebrush, within their colonies (Johnson-Nistler *et al.* 2004, p. 644). Ferrets prey upon prairie dogs; however, in the large prairie dog colonies required to maintain a viable ferret population we do not expect the predator-prey relationship between ferrets and prairie dogs to be altered inasmuch as predators do not limit their prey in a functioning ecosystem. Therefore, we do not expect the ecological dynamics between prairie dogs and sagebrush to be altered. Consequently, we do not expect ferret reintroduction efforts to adversely impact greater sage-grouse.

(f) *Monitoring and evaluation:* Monitoring is a required element of all black-footed ferret reintroduction projects. The following types of monitoring will be conducted.

Reintroduction Effectiveness Monitoring—Partners will monitor population demographics and potential sources of mortality, including plague, annually for 5 years following the last release using spotlight surveys, snow tracking, other visual survey

techniques, and possibly radio-telemetry of some individuals. Thereafter, demographic and genetic surveys will be completed periodically to track population status. Surveys will incorporate methods to monitor breeding success and long-term survival rates. In general, the Service anticipates that monitoring will be conducted by the lead for each reintroduction site, which in Wyoming will be the WGFD and participating partners. The WGFD will present monitoring results in their annual reports.

Donor Population Monitoring—Ferrets used for reintroduction will either be from the captive-breeding population or translocated from another viable reintroduction site. Ferrets in the captive-breeding population are managed and monitored in accordance with the Association of Zoos and Aquariums (AZA) Black-footed Ferret Species Survival Plan (SSP®). A breeding population of 280 animals will be maintained to provide a sustainable source of ferrets for reintroduction. The AZA SSP® Husbandry Manual provides up-to-date protocols for the care, propagation, preconditioning, and transportation of captive ferrets and is used at all participating captive-breeding facilities. Ferrets may also be translocated from other reintroduction sites (which also originated from captive sources), provided their removal will not create adverse impacts upon the donor population and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. Population monitoring will be conducted at all donor sites.

Monitoring Impacts to Other Listed Species—We do not expect impacts to other federally listed species (see section (e) discussion, above). The greater sage-grouse, a candidate species, is the only species with habitat that might overlap with the black-footed ferret. However, we do not expect ferret reintroduction efforts to adversely impact

greater sage-grouse for the reasons previously discussed. The WGFD conducts annual monitoring of the greater sage-grouse Statewide. Additional monitoring will occur on non-federal lands enrolled in the Wyoming Candidate Conservation Agreement with Assurances for the greater sage-grouse and on Federal lands enrolled in the Wyoming Candidate Conservation Agreement for the greater sage-grouse.

Findings

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing black-footed ferrets into the proposed Wyoming NEP will further the conservation of the species, but that this population is not essential to the continued existence of the species in the wild.

Peer Review

In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three or more appropriate and independent specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this proposed NEP designation. The purpose of such review is to ensure that the proposed NEP designation is based on the best scientific information available. We will invite these peer reviewers to comment during the public comment period and will consider their comments and information on this proposed rule during preparation of a final determination.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5. U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory

flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area that would be affected if this proposed rule is adopted includes release sites in Wyoming and adjacent areas in Wyoming into which black-footed ferrets may disperse. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the exemption for incidental take, we do not expect this rule to have significant effects on any activities on Federal, State, Tribal, or private lands within the NEP. In regard to section 7(a)(2), the population is treated as proposed for listing, and Federal action agencies are not required to consult on their activities, unless the ferret is located within a National Wildlife Refuge or unit of the National Park Service. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because the proposed NEP is, by definition, not essential to the survival of the species, conferring will likely not be required for ferret populations within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP area. As

a result, and in accordance with these regulations, some modifications to proposed Federal actions within the NEP area may occur to benefit the ferret, but we do not expect projects to be halted or substantially modified as a result of these regulations.

If adopted, this proposal would broadly authorize incidental take of the black-footed ferret within the NEP area. The regulations implementing the Act define “incidental take” as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP area that are in accordance with Federal, State, Tribal, and local laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be permitted. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property near the NEP area are ranching and energy development. We believe the presence of the black-footed ferret would not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of the ferret, and Federal agencies would only have to comply with sections 7(a)(1) and 7(a)(4) of the Act in these areas. Therefore, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP area.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) If adopted, this proposal would not “significantly or uniquely” affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of \$100 million or greater in any year (*i.e.*, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act). This proposed NEP designation for the black-footed ferret would not impose any additional management or protection requirements on the State or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. This rule would allow for the take of reintroduced black-footed ferrets when such take is incidental to an otherwise legal activity, such as recreation (*e.g.*, hiking, hunting, bird watching), forestry, agriculture, hydroelectric power generation, and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe that establishment of this NEP would conflict with existing or proposed human activities or hinder public use of ferret habitat in Wyoming.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will

not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a federalism summary impact statement is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Wyoming. Achieving the recovery goals for this species would contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments would not change; and fiscal capacity would not be substantially directly affected. The proposed rule operates to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Wyoming. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a federalism summary impact statement under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), require that Federal agencies obtain approval from OMB before collecting information from the public. This proposed rule does not contain any new information collections that require approval. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned OMB Control Number 1018-0095, which expires on October 31, 2017. We may not collect or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

In compliance with all provisions of NEPA, we have prepared a draft environmental assessment on this action, which is available for public review: (1) in person at the Wyoming Ecological Services Field Office (see **ADDRESSES**) and (2) online at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2015-0013, or at <http://www.fws.gov/wyominges/>.

Government-to-Government Relationship with Tribes

In accordance with the presidential memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175 (65 FR 67249), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on federally recognized Indian Tribes and have determined that Tribal lands overlap the proposed Wyoming NEP in portions of Fremont and Hot Springs Counties. However, participation in black-footed ferret recovery is entirely voluntary. If suitable habitat for ferret recovery is available, non-Federal landowners, including Tribes, may choose to either not participate, or to participate through authorities under 10(j), 10(a)(1)(A), or the SHA (U.S. Fish and Wildlife Service 2013b). If ferrets were reintroduced on non-tribal lands adjacent to Tribal lands and subsequently dispersed onto Tribal lands, the aforementioned authorities would provide a more relaxed regulatory situation under the Act through allowances for incidental take. However, as stated previously, we are not aware of any prairie dog complexes suitable for ferret reintroduction on or adjacent to Tribal lands. The nearest potential reintroduction sites are two white-tailed prairie dog complexes—Fifteen-mile Complex near Worland in Hot Springs County and Sweetwater Complex near Sweetwater Station in Fremont County (Luce 2008, pp. 29–30). Both sites are of intermediate potential for ferret reintroduction and are located approximately 19 miles (30 kilometers) from reservation boundaries. We have communicated this information to the Northern Arapaho and Eastern Shoshone Tribes in Wyoming in letters offering government-to-government consultation.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use because energy development is compatible with black-footed ferret recovery. Because this action is not a significant energy action, no Statement of Energy Effects is required.

Clarity of This Rule

We are required by E.O. 12866, E.O. 12988, and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections and paragraphs that are unclearly written, which sections or sentences are too long, or the sections where you feel lists and tables would be useful.

References Cited

A complete list of all references cited in this final rule is available at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2015–0013, or upon request from the Wyoming Ecological Services Field Office (see **ADDRESSES**).

Authors

The authors of this proposed rule are staff members of the Service’s Mountain-Prairie Region and the Wyoming Ecological Services Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for “Ferret, black-footed” under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

MAMMALS

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Ferret, black-footed	<i>Mustela nigripes</i>	Western U.S.A., Western Canada, Mexico	Entire, except where listed as an experimental population	E	1, 3, 433, 545, 546, 582, 646, 703, 737	NA	NA
Ferret, black-footed	<i>Mustela nigripes</i>	Western U.S.A., Western Canada, Mexico	U.S.A. (WY and specified portions of AZ, CO, MT, SD, and UT, see 17.84(g)(9))	XN	433, 545 546, 582, 646, 703, 737	NA	17.84(g)

* * * * *

3. Amend §17.84(g) by:
 - a. Revising paragraphs (g)(1) and (g)(6)(i);
 - b. By adding paragraph (g)(9)(viii); and
 - c. By adding a map entitled “Wyoming Black-footed Ferret NEP” immediately following the map entitled “Rosebud Sioux Tribe ITOPA SAPA KIN (Black-footed Ferret) Experimental Population Area – South Dakota.”

The revisions and additions read as follows:

§17.84 Special rules—vertebrates.

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(g) * * *

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) through (viii) of this section are nonessential experimental populations. We will manage each of these populations, and each reintroduction site within the Wyoming NEP, in accordance with their respective management plans.

* * * * *

(6) * * *

(i) Report such taking in Wyoming, including the Shirley Basin/Medicine Bow experimental population area, to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772-2374).

* * * * *

(9) * * *

(viii) The Wyoming Experimental Population Area encompasses most of the State of Wyoming. The boundaries of the nonessential experimental population include all areas in the State of Wyoming outside of the Shirley Basin/Medicine Bow Management Area (see paragraph (g)(9)(i)) and the small portion of Wyoming included as part of the Northwestern Colorado/Northeastern Utah Experimental Population Area (see paragraph (g)(9)(v)). Any black-footed ferret found within the Wyoming Experimental Population Area will be considered part of the nonessential experimental population after the first breeding season following the first year of black-footed ferret release. A black-footed ferret occurring outside of the State of Wyoming would initially be considered as endangered, but may be captured for genetic testing. If necessary, disposition of the captured animal may occur in the following ways:

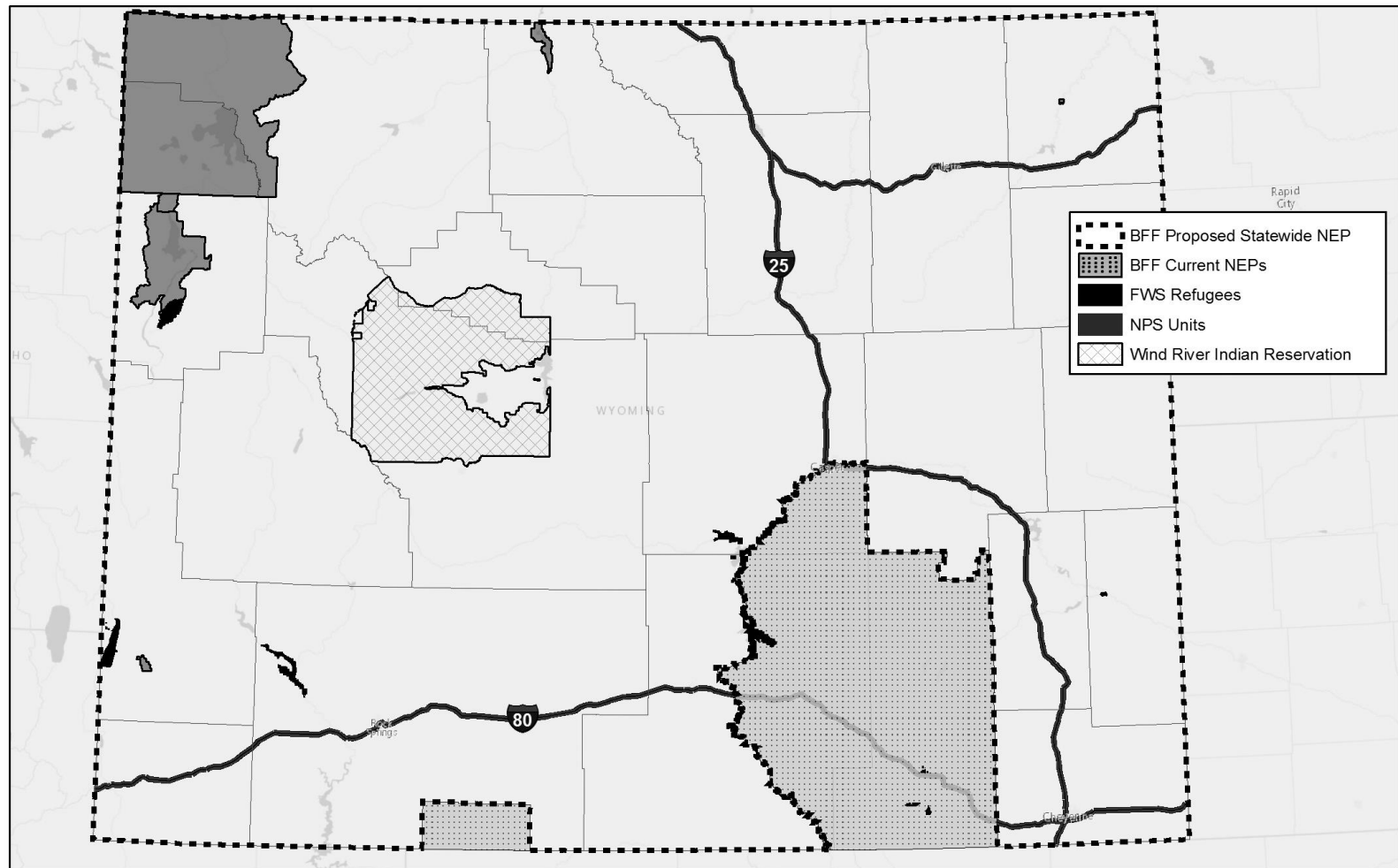
(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan.

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Wyoming Proposed Statewide Non-essential Experimental Population (NEP) for Black-footed Ferrets



Created By: US FWS WYES

Map Date: 2/24/2015

Source: FWS | BLM | BOC | WYGISC | BTS | ESRI

Base Map: Service Layer Credits: Esri, HERE, DeLorme, MapmyIndia, ©
OpenStreetMap contributors, and the GIS user community



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Dated: April 2, 2015.

Signed: Michael J. Bean

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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